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DEC 13 2011

KIM TURNER  
Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: T. Fraguero, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF MARIN

CENTER FOR ENVIRONMENTAL HEALTH, a non-profit corporation,	)	Case No. CIV-1102580
	)	
Plaintiff,	)	[PROPOSED] CONSENT JUDGMENT AS TO 99¢ ONLY STORES
	)	
v.	)	
	)	
99¢ ONLY STORES; and DOES 1 through 200, inclusive,	)	
	)	
Defendants.	)	
	)	

**1. INTRODUCTION**

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation ("CEH"), and 99¢ Only Stores ("Settling Defendant"), to settle certain claims asserted by CEH against Settling Defendant as set forth in the operative complaint in the matter entitled *Center for Environmental Health v. 99¢ Only Stores, et al.*, Marin County Superior Court Case No. CIV-1102580 (the "Action").

1.2 On December 9, 2010, CEH provided a "Notice of Violation of Proposition 65" to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000, and to Settling Defendant regarding the presence of lead and lead compounds (collectively, "Lead") in the

1 Halloween Vinyl Devil's Pitchfork ("Covered Products") manufactured, distributed and/or sold by  
2 Settling Defendant.

3 1.3 On May 20, 2011, CEH filed the Action against Settling Defendant.

4 1.4 Settling Defendant is a corporation that employs 10 or more persons, and that  
5 manufactures, distributes and/or sells Covered Products in the State of California.

6 1.5 For purposes of this Consent Judgment only, CEH and Settling Defendant (the  
7 "Parties") stipulate that this Court has jurisdiction over the allegations of violations contained in  
8 the Complaint and personal jurisdiction over Settling Defendant as to the acts alleged in the  
9 Complaint, that venue is proper in the County of Marin, and that this Court has jurisdiction to  
10 enter this Consent Judgment as a full and final resolution of all claims which were or could have  
11 been raised in the Complaint based on the facts alleged therein with respect to Covered Products  
12 manufactured, distributed, and/or sold by Settling Defendant.

13 1.6 CEH and Settling Defendant enter into this Consent Judgment as a full and final  
14 settlement of all claims that were raised in the Complaint, or which could have been raised in the  
15 Complaint, arising out of the facts or conduct related to Settling Defendant alleged therein. By  
16 execution of this Consent Judgment and agreeing to comply with its terms, the Parties do not  
17 admit any facts or conclusions of law including, but not limited to, any facts or conclusions of law  
18 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law  
19 or equitable requirements relating to Lead in the Covered Products. Nothing in this Consent  
20 Judgment is or shall be construed as an admission by the Parties of any fact, conclusion of law,  
21 issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or be  
22 construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation  
23 of law. Settling Defendant denies the material, factual and legal allegations in CEH's Complaint  
24 and expressly denies any wrong doing whatsoever. Nothing in this Consent Judgment shall  
25 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or  
26 any other pending or future legal proceedings except as to the claims for Covered Products settled  
27 herein. This Consent Judgment is the product of negotiation and compromise and is accepted by  
28 the Parties solely for purposes of settling, compromising, and resolving issues disputed in this

1 action.

2 **2. INJUNCTIVE RELIEF**

3 **2.1 Reformulation of Covered Products.** After the date of entry of this Consent  
4 Judgment (the "Effective Date"), Settling Defendant shall not manufacture, ship, sell or offer for  
5 sale any Covered Product unless such Covered Product complies with the following Lead Limits:

6 2.1.1 "Paint or other Surface Coatings" as defined in 16 C.F.R. § 1303.2(b): no  
7 more than 0.009 percent Lead by weight (90 parts per million ("ppm")).

8 2.1.2 All other materials: no more than .01 percent Lead by weight (100 ppm).

9 **2.2 Market Withdrawal of Covered Products.** On or before the Effective Date,  
10 Settling Defendant shall cease shipping the Halloween Vinyl Devil's Pitchfork, SKU No. 8-  
11 76416-05092-8, as identified in CEH's pre-suit Notice of Violation to Settling Defendant (the  
12 "Recall Covered Product") to stores and/or customers in California, and Settling Defendant shall  
13 withdraw the Recall Covered Product from the market in California, and, at a minimum, send  
14 instructions to any of its stores and/or customers that offer the Recall Covered Product for sale in  
15 California to cease offering such Recall Covered Product for sale and to either return all Recall  
16 Covered Products to Settling Defendant for destruction, or to directly destroy the Recall Covered  
17 Products. Any destruction of the Recall Covered Products shall be in compliance with all  
18 applicable laws. Settling Defendant shall keep and make available to CEH for inspection and  
19 copying records and correspondence regarding the market withdrawal and destruction of the  
20 Recall Covered Products. If there is a dispute over the corrective action, the Parties shall meet and  
21 confer before seeking any remedy in court

22 **2.3 Confirmatory Testing by CEH.** CEH intends to conduct periodic testing of the  
23 Products. Any such testing shall be conducted by an independent laboratory in accordance with  
24 CPSIA Test Method CPSC-CH-E1002-08.1, or such other equivalent acid digest methodology  
25 (the "Test Protocol"). In the event that CEH's testing demonstrates Lead levels in excess of the  
26 requirements of Section 2.1 subsequent to the Effective Date, CEH shall inform Settling  
27 Defendant of the violation(s), including information sufficient to permit Settling Defendant to  
28 identify the Product(s) and the location at which such Product was sold. CEH shall also provide

1 Settling Defendant with a copy of its laboratory test results demonstrating Lead levels in excess of  
2 the requirements of Section 2.1. Settling Defendant shall, within 30 days following such notice,  
3 provide CEH, at the address listed in Section 8, with a detailed plan of correction to address the  
4 alleged violation(s). If there is a dispute over Settling Defendant's proposed corrective action, the  
5 Parties shall meet and confer prior to bringing any enforcement action under Section 4.

6 **3. PAYMENTS**

7 **3.1 Payments From Settling Defendant.** Within ten (10) business days of the entry  
8 of this Consent Judgment, Settling Defendant shall pay the total sum of \$35,000 as a settlement  
9 payment. Any failure by Settling Defendant to comply with the payment terms herein shall be  
10 subject to a stipulated late payment fee of \$100 per day, which amount shall be recoverable by  
11 CEH, together with its reasonable attorneys' fees and costs, in an enforcement proceeding brought  
12 pursuant to Section 3.

13 **3.2 Allocation of Payments.** The total settlement amount for Settling Defendant shall  
14 be paid in three separate checks delivered to the offices of the Lexington Law Group (Attn:  
15 Howard Hirsch), 503 Divisadero Street, San Francisco, California 94117, and made payable and  
16 allocated as follows:

17 **3.2.1** Settling Defendant shall pay the sum of \$3,500 as a penalty pursuant to  
18 Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with  
19 Health & Safety Code § 25249.12. The penalty check shall be made payable to the Center For  
20 Environmental Health.

21 **3.2.2** Settling Defendant shall pay the sum of \$9,500 as payment to CEH in lieu  
22 of penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations,  
23 Title 11, § 3202(b). CEH will use such funds to continue its work educating and protecting people  
24 from exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such  
25 funds to monitor compliance with the reformulation requirements of this and other similar Consent  
26 Judgments. In addition, as part of its *Community Environmental Action and Justice Fund*, CEH  
27 will use four percent of such funds to award grants to grassroots environmental justice groups  
28 working to educate and protect people from exposures to toxic chemicals. The method of

1 selection of such groups can be found at the CEH web site at [www.keh.org/what-we-](http://www.keh.org/what-we-)  
2 [do/supporting-communities/the-justice-fund](http://www.keh.org/what-we-do/supporting-communities/the-justice-fund). The payment in lieu of penalty check shall be made  
3 payable to the Center For Environmental Health.

4 3.2.3 Settling Defendant shall pay the sum of \$22,000 as reimbursement of a  
5 portion of CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost  
6 reimbursement check shall be made payable to the Lexington Law Group.

#### 7 **4. ENFORCEMENT**

8 4.1 **Enforcement Procedures.** Prior to bringing any motion or order to show cause to  
9 enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the violating  
10 party thirty (30) days advanced written notice of the alleged violation. The Parties shall meet and  
11 confer during such thirty (30) day period in an effort to try to reach agreement on an appropriate  
12 cure for the alleged violation. After such thirty (30) day period, the Party seeking to enforce may,  
13 by new action, motion or order to show cause before the Superior Court of Marin, seek to enforce  
14 the terms and conditions contained in this Consent Judgment.

#### 15 **5. MODIFICATION AND DISPUTE RESOLUTION**

16 5.1 **Modification.** This Consent Judgment may be modified from time to time by  
17 express written agreement of the Parties, with the approval of the Court, or by an order of this  
18 Court upon motion and in accordance with law.

19 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
20 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
21 modify the Consent Judgment.

#### 22 **6. APPLICATION OF CONSENT JUDGMENT**

23 6.1 This Consent Judgment shall apply to and be binding upon the Parties hereto, their  
24 divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

#### 25 **7. CLAIMS COVERED AND RELEASE**

26 7.1 This Consent Judgment is a full, final, and binding resolution between CEH and  
27 Settling Defendant and Settling Defendant's parents, shareholders, divisions, subdivisions,  
28 subsidiaries, partners, sister companies and its successors and assigns ("Defendant Releasees"),

1 and all entities to whom they distribute or sell Covered Products including, but not limited to,  
2 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees  
3 (“Downstream Defendant Releasees”), of any violation of Proposition 65 or any other statutory or  
4 common law claims that have been or could have been asserted in the public interest against  
5 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, regarding the  
6 failure to warn about exposure to Lead arising in connection with Covered Products manufactured,  
7 distributed, or sold by Settling Defendant prior to the Effective Date. Compliance with the terms  
8 of this Consent Judgment by Settling Defendant and the Defendant Releasees shall constitute  
9 compliance with Proposition 65 by Settling Defendants, the Defendant Releasees and its  
10 Downstream Defendant Releasees with respect to any alleged failure to warn about Lead in  
11 Covered Products manufactured, distributed or sold by Settling Defendant after the Effective Date.

12 **8. PROVISION OF NOTICE**

13 8.1 When any Party is entitled to receive any notice under this Consent Judgment, the  
14 notice shall be sent by certified mail and electronic mail as follows:

15 8.1.1 **Notices to Settling Defendant.** The person for Settling Defendant to  
16 receive Notices pursuant to this Consent Judgment shall be:

17 Patrick J. Cafferty, Jr.  
18 Munger, Tolles & Olson LLP  
19 560 Mission Street  
20 San Francisco, CA 94105  
21 Patrick.Cafferty@mto.com

22 8.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to  
23 this Consent Judgment shall be:

24 Howard Hirsch  
25 Lexington Law Group  
26 503 Divisadero Street  
27 San Francisco, CA 94117  
28 hhirsch@lexlawgroup.com

8.2 Any Party may modify the person and address to whom the notice is to be sent by  
sending the other Party notice by electronic or certified mail.

1       **9. COURT APPROVAL**

2           9.1     CEH will comply with the settlement notice provisions of Health & Safety Code  
3     § 25249.7(f) and Title 11 of the California Code of Regulations § 3003 by preparing and filing a  
4     motion for approval of this Consent Judgment and Settling Defendant shall support approval of  
5     such motion.

6           9.2     If this Consent Judgment is not entered by the Court, it shall be of no force or effect  
7     and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

8       **10. RETENTION OF JURISDICTION**

9           10.1    This Court shall retain jurisdiction of this matter to implement or modify the  
10    Consent Judgment.

11       **11. SEVERABILITY**

12           11.1    In the event that any of the provisions of this Consent Judgment are held by a court  
13    to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

14       **12. ENTIRE AGREEMENT**

15           12.1    This Consent Judgment contains the sole and entire agreement and understanding  
16    of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
17    negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
18    and therein. There are no warranties, representations, or other agreements between the Parties  
19    except as expressly set forth herein. No representations, oral or otherwise, express or implied,  
20    other than those specifically referred to in this Consent Judgment have been made by any Party  
21    hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,  
22    shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically  
23    contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the  
24    Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,  
25    modification, waiver, or termination of this Consent Judgment shall be binding unless executed in  
26    writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent  
27    Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof  
28    whether or not similar, nor shall such waiver constitute a continuing waiver.

1 **13. GOVERNING LAW AND CONSTRUCTION**

2 13.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
3 California.

4 **14. NO EFFECT ON OTHER SETTLEMENTS**

5 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
6 against an entity that is not Settling Defendant on terms that are different than those contained in  
7 this Consent Judgment.

8 **15. EXECUTION IN COUNTERPARTS**

9 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
10 means of facsimile, which taken together shall be deemed to constitute one document.

11 **16. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

12 16.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
13 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
14 execute the Consent Judgment on behalf of the Party represented and legally bind that Party. The  
15 undersigned have read, understand and agree to all of the terms and conditions of this Consent  
16 Judgment. Except as explicitly provided herein, each Party is to bear its own fees and costs.

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18 **IT IS SO STIPULATED:**

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20 Dated: September 28, 2011

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**CENTER FOR ENVIRONMENTAL HEALTH**



CHARLIE PIZZANO

Printed Name

ASSOCIATE DIRECTOR


Title



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Dated: ~~August~~ <sup>Sept</sup> 20, 2011

99 CENTS ONLY STORES



Russell F. Walpert  
Printed Name

Chief Legal Officer  
Title

**IT IS SO ORDERED, ADJUDGED,  
AND DECREED**

Dated: **DEC 13 2011**

**LYNN DURYEE**

Judge of the Superior Court of the State of California